

(2004) 01 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 2602 of 1996

V.S. Noor Mohammed, Civil Engineering Contractor

APPELLANT

Vs

The General Manager, Southern Railways, The Divisional
Railway Manager, DRM(Works) and The Divisional Engineer,
(East) Southern Railway

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 01 MAD CK 0027

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : K.M. Vijayan, for the Appellant; V.G. Suresh Kumar, for the
Respondent

Final Decision : Dismissed

Judgement

1. The petitioner prays for writ of certiorari to call for the records relating to the third respondent herein in his proceedings

No.M/W/496/NEL/1552 dated 26.2.1996.

2. The following facts are sufficient for the disposal of the writ petition.

The petitioner is aggrieved by the impugned order of the third respondent withholding the amounts due to the petitioner/contractor with reference

to the other works, than due under the contract in dispute. The grievance of the petitioner is that the Railways cannot withhold the amounts, which

were due to the Contractor in respect of the other works. In support of the said contention, reliance is made on the judgment of the Supreme

Court in Lakshmichand and Balchand Vs. State of Andhra Pradesh, .

3. I have considered the submissions of the learned counsel for the petitioner as

well as heard the learned counsel for the respondents. The decision relied upon by the learned counsel for the petitioner relates to a decree by the civil court and the decision is based on the well accepted principle that the execution Court cannot go beyond the decree.

4. In this case, the agreement between the Contractor and the Railways specifically provides for the Railways to withhold such an amount as may be due and to maintain lien over the amount due from the Contractor in respect of any other work or contract. Clause 52 and 52-A of the agreement reads as follows:

52. Whenever any claim or claims or payment of a sum of money arises out of or under the contract against the Contractor, the Railway shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the Contractor and for the purpose aforesaid the Railway shall be entitled to withhold the said cash security deposit or the security, if any, furnished as the case may be and also have a lien over the same pending finalisation or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the Contractor, the Railway shall be entitled to withhold and have a lien to retain to the extent of the such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time thereafter may become payable to the Contractor under the same contract or any other contract with this or any other Railway or any other Department of the Central Government pending finalisation or adjudication of any such claim.

It is an agreed term of the contract that the sum of money or monies so withheld or retained under the lien referred to above, by the Railway will be kept withheld or retained as such by the Railway till the claim arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration clause) or by the competent court as the case may be and that the Contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to supra and duly notified as such to the Contractor. For the purpose of this clause, where the Contractor is a partnership firm or a limited company, the Railway shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts

in whole or in part from any such found payable to any partner/limited company, as the case may be whether in his individual capacity or otherwise.

52-A. Any sum of money due and payable to the Contractor (including the Security deposit returnable to him) under the contract may be withheld

or retained by way of lien by the Railway against any claim of this or any other Railway or any other Department of the Central Government in

respect of payment of a sum of money arising out of or under any other contract made by the Contractor with this or any other Railway or any

other Department of the Central Government.

It is an agreed term of the contract that the sum of money so withheld or retained under this clause by the Railway will be kept withheld or retained

as such by the Railway till the claim arising out of or under an other contract is either mutually settled or determined by the arbitrator, if the other

contract is governed by arbitration clause or by the competent court as the case may be, and that the Contractor shall have no claim for interest or

damages whatsoever on this account or on any other ground in respect of any sum of money withheld or retained under this clause and duly

notified as to the Contractor.

A perusal of the above two clauses disclose that the Railways have lien over any other amount, which is payable to the Contractor and to retain the

same to the extent of such demand.

5. Therefore, the ground on which the petitioner has sought to quash the impugned letter cannot be sustained. The writ petition fails and the same is

dismissed.